

ERIN LANEY (CA SBN 259863)
JOHN B. ACIERNO III (CA SBN 257176)
JOSEPH C. DELMOTTE (CA SBN 259460)
PITE DUNCAN, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17933
San Diego, CA 92177-0933
Telephone: (858) 750-7600
Facsimile: (619) 590-1385

Attorneys for US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR GSAA HOME
EQUITY TRUST 2006-1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION

In re

ALFRED H. PENDLETON AND GAIL
PLEASE PENDLETON,

Debtor(s).

Case No. 10-20100

Chapter 7

D.C. No. PD-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

US BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR GSAA HOME EQUITY
TRUST 2006-1,

Movant,

vs.

ALFRED H. PENDLETON AND GAIL
PLEASE PENDLETON, Debtor(s);
MICHAEL D. MCGRANAHAN, Chapter 7
Trustee,

Respondents.

LBR 4001-1 and 9014-1(f)(1)

DATE: March 9, 2010
TIME: 9:30 a.m.
CTRM: 35

501 "I" Street
Sacramento, CA 95814

US Bank National Association, as Trustee for GSAA Home Equity Trust 2006-1 ("Movant"),
moves this court for an order terminating the automatic stay of 11 U.S.C. § 362 as to Movant, so that
Movant may commence and continue all acts necessary to enforce its security interest in real
property generally described as 9540 Birch Basin Court, Las Vegas, Nevada 89148.

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1 On or about January 5, 2010, Alfred H. Pendleton and Gail Flease Pendleton ("Debtors")
2 filed a voluntary petition under Chapter 7 of the Bankruptcy Code, and Michael D. McGranahan was
3 appointed as Chapter 7 Trustee. As a result of said filing, certain acts and proceedings against
4 Debtors and the bankruptcy estate are stayed as provided in 11 U.S.C. § 362.

5 Movant moves this court for relief from stay under 11 U.S.C. §§ 362(d)(1) and 362(d)(2).

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I.**

8 **MOVANT IS ENTITLED TO RELIEF FROM THE**
9 **AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(2).**

10 **NO EQUITY**

11 11 U.S.C. § 362(d)(2) provides that relief from the automatic stay shall be granted if the
12 debtor does not have any equity in the property and the property is not necessary to the debtor's
13 effective reorganization.

14 In In re San Clemente Estates, 5 B.R. 605 (Bankr. S.D. Cal. 1980), the court stated that:
15 § 362(d)(2) reflects congressional intent to allow creditors to
16 immediately proceed against the property where the debtor has no
17 equity and it is unnecessary to the reorganization, even where the
18 debtor can provide adequate protection under § 362(d)(1). (Emphasis
19 added).

20 Id. at 610 (emphasis added).

21 In In re Mikole Developers, Inc., 14 B.R. 524, 525 (Bankr. E.D. Pa. 1981), the court stated
22 that in determining whether equity exists in the property for purposes of § 362(d)(2), all
23 encumbrances are totaled, whether or not all the lienholders have joined in the request for relief from
24 stay. The Ninth Circuit has concurred with this view in Stewart v. Gurley, 745 F.2d 1194 (9th Cir.
25 1984).

26 An appropriate cost of sale factor should also be added to determine if the debtor has any
27 equity in the property. La Jolla Mortgage Fund v. Rancho El Cajon Associates, 18 B.R. 283, 289
28 (Bankr. S.D. Cal. 1982).

29 On or about September 26, 2005, Alfred H. Pendleton and Gail Flease Pendleton
30 ("Debtors"), for valuable consideration, made, executed and delivered to Silver State Financial
Services, dba Silver State Mortgage ("Lender") a Note in the principal sum of \$322,750.00 (the

1 "Note"). Pursuant to the Note, Debtors are obligated to make monthly principal and interest
2 payments commencing November 1, 2005, and continuing until October 1, 2035, when all
3 outstanding amounts are due and payable. The Note provides that, in the event of default, the holder
4 of the Note has the option of declaring all unpaid sums immediately due and payable. A true and
5 correct copy of the Note is attached to the concurrently served and filed Exhibits to the Declaration
6 in Support of Motion for Relief From Automatic Stay ("Exhibits") as exhibit A and incorporated
7 herein by reference.

8 On or about September 26, 2005, the Debtors made, executed and delivered to Lender a Deed
9 of Trust (the "Deed of Trust") granting Lender a security interest in real property commonly
10 described as 9540 Birch Basin Court, Las Vegas, Nevada 89148 (the "Real Property"), which is
11 more fully described in the Deed of Trust. The Deed of Trust provides that attorneys' fees and costs
12 incurred as a result of the Debtors' bankruptcy case may be included in the outstanding balance
13 under the Note. The Deed of Trust was recorded on October 5, 2005, in the Official Records of
14 Clark County, State of Nevada. A true and correct copy of the Deed of Trust is attached to the
15 Exhibits as exhibit B and incorporated herein by reference.

16 Subsequently, Lender's beneficial interest in the Deed of Trust was sold, assigned and
17 transferred to Movant. A true and correct copy of the Corporation Assignment of Deed of Trust
18 evidencing the Assignment of the Deed of Trust to Movant is attached to the Exhibits as exhibit C
19 and incorporated herein by reference.

20 The obligation under the Note is in default as of March 1, 2009, for failure to make payments
21 to Movant. As of January 14, 2010, the total obligation due and owing under the Note is in the
22 approximate amount of \$352,125.74, representing the principal balance of \$322,608.28, interest in
23 the sum of \$23,041.06, late charges in the amount of \$1,109.02, escrow advances in the amount of
24 \$2,721.53, a recoverable balance in the amount of \$2,612.10, and other charges in the amount of
25 \$33.75. This is an approximate amount for purposes of this Motion only, and should not be relied
26 upon as such to pay off the subject loan as interest and additional advances may come due
27 subsequent to the filing of the Motion. An exact payoff amount can be obtained by contacting
28 Movant's counsel. Further, Movant has incurred additional post-petition attorneys' fees and costs in

1 bringing the instant Motion. Moreover, the total arrears under the Note are in the approximate sum
2 of \$29,476.97, excluding the post-petition attorneys' fees and costs incurred in filing the instant
3 Motion.

4 As a result of the default under the Note, a Notice of Default was recorded on August 3, 2009
5 and the foreclosure sale is scheduled for March 8, 2010.

6 **II.**

7 **RELIEF FROM STAY**

8 **LACK OF EQUITY**

9 Movant is informed and believes that, based on the Debtors' bankruptcy Schedules and
10 Statements, the fair market value of the Property is \$165,208.00. True and correct copies of the
11 Debtors' bankruptcy Schedules "A" and "D" are collectively attached to the Exhibits as exhibit D
12 and incorporated herein by reference.

13 Based on the above, Movant maintains that the equity in the Property is as follows:

14	Fair Market Value:	\$165,208.00
15	Less:	
	Movant's Trust Deed	\$352,125.74
16	EMC Mortgage's 2 nd Mortgage	\$59,846.00
	Costs of Sale (8%)	<u>\$13,216.64</u>
17	Equity in the Property:	<\$259,980.38>

18 As a result, there is no equity in the Property for the bankruptcy estate. Moreover, since this
19 is a Chapter 7 proceeding, there is no reorganization in prospect. As a result, Movant is entitled to
20 relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2).

21 **III.**

22 **MOVANT IS ENTITLED TO RELIEF FROM THE**
AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1).

23 **CAUSE - LACK OF ADEQUATE PROTECTION**

24 Pursuant to the provisions of 11 U.S.C. §§ 361 and 362(d)(1), Movant is entitled to adequate
25 protection of its interest in the Property.

26 Movant submits that adequate protection in this case requires normal and periodic cash
27 payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed to
28 Movant, including all attorneys' fees and costs incurred in the filing of this motion.

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3 Movant is informed and believes that Debtors are presently unwilling or unable to provide
4 adequate protection to the Movant and there is no probability that adequate protection can be
5 afforded to Movant within a reasonable time.

6 By reason of the foregoing, Movant is entitled to relief from stay under 11 U.S.C.
7 § 362(d)(1), based upon the failure of Debtors to provide adequate protection to Movant.

8 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

9 1. Terminating the automatic stay of 11 U.S.C. § 362, as it applies to the enforcement by
10 Movant of all of its rights in the Real Property under the Note and the Deed of Trust;

11 2. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

12 3. Granting Movant leave to foreclose on the Real Property and to enforce the security
13 interest under the Note and the Deed of Trust, including any action necessary to obtain possession of
14 the Property;

15 4. Permitting Movant to offer and provide Debtors with information re: a potential
16 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss
17 Mitigation Agreement, and to enter into such agreement with Debtors;

18 5. Alternatively, in the event this court declines to grant Movant the relief requested
19 above, Movant requests that an Order for adequate protection be issued, requiring the Debtors to
20 reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust
21 and all other deeds of trust encumbering the Real Property, including Debtors' obligations to pay
22 when due (a) the monthly installments of principal and interest, as required under the Note;
23 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtors in order to
24 protect Movant's interest in the Real Property, including all attorneys' fees and costs incurred in the
25 filing of this motion;

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1 6. That the attorneys' fees and costs incurred by Movant for filing the instant Motion be
2 included in the outstanding balance of the Note as allowed under applicable non-bankruptcy law;
3 and

4 7. For such other and further relief as the court deems just and proper.

5 Dated: January 27, 2010

PITE DUNCAN, LLP

6 /s/ Erin L. Laney CA SBN 259863

7 ERIN L. LANEY

8 Attorneys for US BANK NATIONAL
ASSOCIATION, AS TRUSTEE FOR GSAA HOME
EQUITY TRUST 2006-1
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